

Practice Indemnity Policy

Combined Financial Services Guide,
Important Information and Policy Wording V.7





Introduction

This brochure is divided into three sections.

Section 1 is our Financial Services Guide. It contains information about who we are and the financial services that we provide **2**

Section 2 is the Important Information section and contains information about the Practice Indemnity Policy..... **6**

Section 3 is the Policy wording **14**

It is important that you read all of these documents carefully before deciding whether to acquire the Practice Indemnity Policy.

The Financial Services Guide applies to financial services provided on or after the date of issue 11 May 2016.

The Important Information and Policy wording applies to policies commencing on or after 1 July 2016.

SECTION 1: Financial Services Guide

This Financial Services Guide (FSG) provides you with information about MDA National Insurance Pty Ltd (MDA National Insurance) to help you decide whether to use the financial services we provide.

It also explains:

- how MDA National Insurance, our staff and other parties are remunerated in relation to those services;
- other documents you may receive in relation to the provision of our financial products and services;
- how we safeguard your personal information; and
- details of our internal and external complaints handling procedures should you need them.

Who are we?

MDA National Insurance Pty Ltd (ABN 56 058 271 417) is a general insurer authorised by the Australian Prudential Regulation Authority. We hold an Australian Financial Services Licence Number 238073 and are authorised to provide financial product advice in relation to, and deal in, general insurance products. We are a wholly owned subsidiary of MDA National Limited ABN 67 055 801 771.

Who do we act for?

MDA National Insurance acts on its own behalf as an insurer. We do not act on your behalf.

What financial services and products do we offer?

We currently offer the following professional indemnity insurance products:

- Professional Indemnity Insurance Policy
- Practice Indemnity Policy
- Dental Indemnity Policy
- Run-off under the Run-off Cover Scheme (ROCS)

Our Professional Indemnity Insurance Policy is only available to Members of MDA National, with limited exceptions. MDA National Insurance does not provide financial services and products from related or non-related product providers.

How can you do business with us?

You can obtain the financial services we offer through trained employees of MDA National Insurance.

They can help you apply for our products and may also give you general financial product advice in relation to these products. When giving general financial product advice our employees will not take into account your personal objectives, financial situation and needs. We may give personal financial product advice in limited situations.

You can give us instructions by telephone, in writing, in person, by email or via our website. In some cases, however, before we provide our products we may require written confirmation and the return of specific documents and completed forms.

How are we remunerated for the services we provide?

We charge a premium for our financial products.

If you choose to finance the cost of our products through a nominated finance corporation, where applicable we may be paid a referral fee of 1% of the amount financed by you.

The Commonwealth Government pays us an administration fee to reimburse the costs of administering the Premium Support Scheme (PSS) and the ROCS. These fees may be based on the number of policyholders and/or Members and are not based on any premium amount. No fee paid to us relating to the PSS or ROCS is deducted out of premiums or any monies paid by policyholders.

How are our employees remunerated for services provided?

The employees of MDA National Insurance who provide our services to you do not receive specific payments or commissions for giving that service. These employees receive salaries.

When and how do we pay other parties?

If you acquire our financial products through an approved broker, we will pay that broker a commission of up to 15% of the total premium and subscription paid by you. We may pay referral fees to third parties who refer business to us as a lump sum amount or a percentage of the total premium. We receive the total premium paid by you and pay commissions and referral fees in a separate transaction back to the broker or third party.

How do we safeguard your personal information?

The protection of your personal information is important to us. We collect your personal information to ensure that we are able to provide you with appropriate products and services. We collect, handle, store and disclose personal and sensitive information in order to:

- decide whether to issue a policy;
- determine the terms and conditions of the policy;
- analyse data;
- handle claims;
- meet our legal obligations;
- administer Government Schemes; and
- provide our products to you and improve the delivery of our products and services.

As part of our commitment to client service and the protection of client confidentiality we have adopted the Australian Privacy Principles set out in the *Privacy Act 1988* (Cth) as amended. You can download our Privacy Policy from our website at mdanational.com.au or contact our Member Services team on 1800 011 255 to obtain a copy.

Marketing information

We are committed to providing you with access to leading products and services. From time to time we may provide you with information on other MDA National Insurance or third party products or services that may be of interest to you. We may also disclose your personal information on a confidential basis to our related entities and to the MDA National Group so that they can also offer you products and services.

If you do not wish to receive this information please contact Member Services on 1800 011 255 or write to us at any of the addresses set out on the back of this document.

What to do if you want to make a complaint

We are committed to dealing openly with all of our clients and we will endeavour to resolve any complaint quickly, efficiently and fairly. We view complaint resolution as an important part of our continuous improvement process.

A complaint is an expression of dissatisfaction made to us, relating to our products or services, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

Internal dispute resolution

In our experience, most issues can be resolved with a quick phone call or email to one of our staff.

If you are not satisfied with the response to your complaint or do not take up a matter directly with staff, please contact our Complaints Officer by:

Phone: 1800 034 466 (Freecall)
Fax: (08) 9415 1492
Email: complaintsofficer@mdanational.com.au
In writing: PO Box 445
WEST PERTH WA 6872

We will respond to you with a decision within 15 business days. If you are satisfied with our response, the matter will be considered resolved. If you are not satisfied with our response and wish to pursue the matter further you may wish to refer your complaint to the external dispute resolution scheme to which we belong.

External dispute resolution

If you are not satisfied with the outcome of our internal dispute resolution process, you can refer the dispute to the Financial Ombudsman Service Limited (the FOS). The FOS is an independent and impartial national body established to handle enquiries and complaints and to resolve disputes between consumers and their financial services provider. Its service is free to consumers.

The FOS will review a complaint by you or an insured person only if you or the insured person have first gone through our internal complaints and dispute resolution process and the matter to which the complaint relates is within the FOS' Terms of Reference. Please note that the FOS is not able to consider matters relating to Membership of MDA National.

For more information about the FOS and the types of matters it can resolve, visit its website at fos.org.au or contact our Complaints Officer. Online dispute forms are available on the FOS website.

You can contact the FOS by:

Phone: 1300 780 808 (local call fee applies)
In writing: GPO Box 3
MELBOURNE VIC 3001

Further information and updates

This FSG is issued 11 May 2016 and applies to financial services provided on or after that date. Please check our website for updates.

SECTION 2: Important Information

Your MDA National Insurance Important Information

This Important Information section is designed to help you make an informed decision about acquiring the Practice Indemnity Policy (Policy) underwritten by MDA National Insurance Pty Ltd (MDA National Insurance) ABN 56 058 271 417, AFS Licence Number 238073. You can contact us at any of the addresses shown on the back of this booklet.

It is important that you carefully read all of the information in this section, including the standard Policy wording in Section 3, its terms and conditions, the exclusions and the defined terms. If a Policy is issued to you, you should also read the certificate of insurance and any endorsements issued in conjunction with the Policy wording.

Any financial product advice in this document is of a general nature only and does not take into account your particular circumstances.

Information in this section may need to be updated from time to time. You can obtain a copy of any updated information by contacting us. If there is a material change to anything that generally affects the Policy, we may provide all policyholders with a new or supplementary Important Information section.

Updates will also be available on our website mdanational.com.au. This section is issued on 11 May 2016 and applies to policies commencing on or after 1 July 2016.

Applying for Practice Indemnity Insurance

You must fill out a proposal to apply for this insurance. In the case of renewal, you must confirm that your details are correct and that you have disclosed to us every matter that you know, or could reasonably be expected to know, is relevant to our decision whether to accept your risk and, if so, on what terms.

A policy proposal is included in the application pack, or is available by calling 1800 011 255 or visiting the Download Centre of our website mdanational.com.au.

Your duty of disclosure

Before you enter into an insurance contract, you have a duty to tell us anything that you know, or could reasonably be expected to know, may affect our decision to insure you and on what terms. You have this duty until we agree to insure you. You have the same duty before you renew, extend, vary or reinstate an insurance contract.

You do not need to tell us anything that:

- reduces the risk we insure you for; or
- is common knowledge; or
- we know or should know as an insurer; or
- we waive your duty to tell us about.

If you do not tell us something

If you do not tell us anything you are required to, we may cancel your contract or reduce the amount we will pay you if you make a claim, or both. If your failure to tell us is fraudulent, we may refuse to pay a claim and treat the contract as if it never existed.

About the Practice Indemnity Policy

The Practice Indemnity Policy is a contract of insurance. The following is a summary of the insurance only and does not form part of the contract of insurance and does not refer to exclusions or other terms and conditions that may reduce or avoid the cover. You must read the Policy wording (Section 3 of this document) which sets out the terms and conditions of this insurance and make sure that it meets your needs.

The Policy insures you and people who fall within the definition of insured persons for civil liability for claims arising directly in connection with your provision of healthcare services, including in the course of certain clinical trials and research projects and civil liability for claims arising from an unintentional breach of privacy (clauses 1, 2 and 3). You are also able to seek assistance with the handling of patient complaints.

The Policy provides cover against certain claims arising out of you or an insured person, in good faith and in the public interest, reporting an incident or a health care professional to a hospital, area health authority or professional body or participating in an investigation of such an incident (clause 4).

The Policy also indemnifies you and insured persons for legal costs that we incur on your behalf in connection with the defence or settlement of claims covered under clauses 1, 2, 3 and 4.

The Policy also covers defence costs incurred by us on behalf of you and an insured person for:

- intellectual property disputes and defamation claims (clauses 6 and 7);
- official proceedings, inquiries or examinations in relation to the provision of healthcare services by you or an insured person where you or the insured person are required to respond, participate or attend (clause 8); and
- claims that you or an insured person have breached competition, consumer or fair trading laws (clause 9).

The Policy also covers defence costs incurred by us on your behalf for employment disputes (clause 10).

The Policy also insures against the reasonable cost of replacement or restoration of certain lost or damaged documents (clause 11).

What makes up the insurance contract?

The insurance contract is made up of:

- the Certificate of Insurance issued to you;
- the Policy wording included in this Practice Indemnity Policy booklet;
- any Endorsement to this Practice Policy wording that is current during the period of insurance; and
- any endorsement issued to you.

You must read all of these documents carefully. They should be kept in a secure place.

A claims made Policy

The Practice Indemnity Policy is a claims made contract of insurance. This means that the Policy responds to claims made against you and notified to us during the period of insurance.

The Policy does not cover matters you were aware of prior to the commencement of the period of insurance, whether you told us about them on your proposal or not.

Under Section 40(3) of the *Insurance Contracts Act 1984* (Cth), if you notify us in writing during your period of insurance of circumstances that may give rise to a claim, we will not be relieved of liability under the Policy by reason only that any claim relating to those circumstances was made after your period of insurance. However, you must notify us of the claim as soon as you become aware of it.

Continuity of cover

Civil liability claims are often made years after the services have been provided so if you want to remain insured it is important that you continue to renew your Policy or obtain alternative insurance. If you notify us of a claim after your Policy has expired or is cancelled, you may not be indemnified by us for that claim.

Retroactive cover

With limited exceptions, your Policy will contain a retroactive date which is specified on the certificate of insurance. The Policy coverage is limited to incidents that occur on or after the retroactive date. So, if you have a retroactive date of 1 July 2003, for example, your Policy will not cover a claim arising from an incident that occurred prior to this date, even if you first learn about the claim and report it to us during the period of insurance.

Once your retroactive date has been agreed by us, in most cases, you will retain this retroactive date for each subsequent renewal. However if you do require additional retroactive cover, you can apply for this at any time.

How much we insure you for

Your Certificate of Insurance sets out the Maximum Limits of Indemnity that we will pay under the Policy.

Our standard limits of indemnity are set out below.

Our standard Maximum Limits of Indemnity are:

- \$10,000,000 for the aggregate of all claims, defence costs and other matters indemnified under the Policy during the period of insurance and \$5,000,000 for any one claim under clauses 1 to 4 of the Policy (including defence costs under clause 5); or
- \$20,000,000 for the aggregate of all claims, defence costs and other matters indemnified under the Policy during the period of insurance and \$10,000,000 for any one claim under clauses 1 to 4 of the Policy (including defence costs under clause 5).

Sub-limits as set out in the Certificate of Insurance apply to the aggregates of each of:

- the reasonable cost of replacing or restoring certain lost or damaged documents (clause 11); and
- defence costs for each of intellectual property disputes (clause 6);
- defamation claims (clause 7);
- investigations (clause 8);
- competition, consumer and trading claims (clause 9); and
- employment disputes (clause 10);

indemnified under the Policy during the period of insurance.

Policy excess

If the Certificate of Insurance specifies an excess, it is payable to us for each and every applicable matter for which indemnity is claimed under the Policy and must be paid before we will pay any indemnity (clause 13).

Single Claim

Where the same act or omission or one or more related acts or omissions give rise to more than one claim whether by one or more claimants, or to more than one investigation, all such claims or investigations will constitute a single claim for indemnity under the Policy and will be treated as if first made at the time the earliest claim against you or an insured person was made (clause 14).

What we do not insure you for

The Policy will not provide insurance cover in certain circumstances. Clauses 15 and 16 of the Policy wording set out what the Policy does not cover. Please ensure that you read the Policy exclusions carefully in order to understand what is not covered.

Policy conditions

There are things that you must do. If you do not do them, we may be able to reduce or avoid our liability under the Policy and to cancel the Policy. These conditions are set out in clauses 17 to 25 inclusive of the Policy wording.

For example, you must pay the premium when it is due (clause 17) and all your employees and contractors must be suitably qualified and registered as required to perform the duties for which they are employed or contracted and you must take steps to ensure that each health professional has current and adequate professional indemnity insurance (clause 25).

You must also notify us in writing as soon as practicable after you become aware of any claim, investigation or circumstances that could give rise to such (clause 18).

General terms and definitions

There are some general terms and definitions that apply to all of the insuring clauses. These are set out in clauses 26 to 36 inclusive of the Policy wording.

For example, when a claim includes both allegations that are indemnified under the Policy and allegations that are not indemnified, we pay only the amount of your defence costs that we regard as attributable to the allegations for which we provide indemnity (clause 26).

We also have the right to conduct and control any legal proceedings (clause 27).

How much will the Policy cost?

The total insurance premium is made up of the basic premium and Government taxes and charges. The basic premium will vary depending on the risk covered.

We use a system of rating factors to calculate this component including:

- the specialties conducted within the practice;
- the number of health professionals working for or on behalf of the practice; and
- the number of other practice employees.

Payment of premium

You must pay the premium or any instalment of premium on or before the date when it is due.

Refunds

A premium refund may be due to you if your Policy is cancelled or amended during the year. Subject to the cancellation clause (clause 31), if the total refund is less than \$5 we will either issue this as a refund directly to your nominated bank account or donate the amount to a registered charity in line with our Corporate Social Responsibility policy.

Cooling off period

You have a cooling off period that allows you to cancel your Policy within 21 days of it being issued if you are not completely satisfied.

You must cancel the Policy in writing. We will refund the premium (including any Government duties and charges) that you have paid within 10 working days of receipt of your written notice of cancellation.

Your cooling off right does not apply if you notify a potential claim or make a claim for indemnity under your Policy prior to your request to cancel it.

Cancellation

You may cancel your Policy at any time by telling us in writing.

If you cancel after the 21-day cooling off period, and you have paid the total annual premium, we will refund the premium for the unexpired period of insurance on a pro-rata basis, less a cancellation fee equal to 45 days' premium.

If you are paying by quarterly instalments, you will be required to pay us the cancellation fee less any refund that may be due to you.

We will not make any refund where you have made a claim for indemnity or notified a potential claim under the Policy.

We may cancel the Policy by giving you 3 business days' written notice if:

- you failed to disclose or misrepresented to us any information that you knew, or could reasonably be expected to have known, was relevant to our decision to insure you and on what terms;
- you fail to comply with your duty of utmost good faith to us;
- you fail to comply with a provision of the Policy, including the provision to pay the premium or a premium instalment;
- you fail to comply with any provision of the Policy which requires you to notify us; or
- you make a fraudulent claim for indemnity under the Policy.

How to make a claim for indemnity under the Policy

Claim and incident reporting is critical and allows us to properly investigate the matter and provide you with sound advice. If any of the following occur you must tell us in writing as soon as practicable via our online notification form, by fax to 1300 011 235 or by mail to any of our offices.

Incidents or circumstances that may give rise to a claim

If at any time during the period of insurance you become aware of a matter (including an incident involving an employee) that you believe may result in a claim against you or any insured person or a claim for indemnity under the Policy, let us know as soon as you can. Prompt reporting will enable us to manage the process at an early and crucial time and allow us to advise you as to how you might respond.

Don't wait until a claim is made against you. Your written advice to us should include:

- your name and Policy number;
- the date, time and place of the event;
- the specific nature of the incident as well as a detailed account of the professional service performed and by whom;
- the name and address of any other professionals involved and their relationship to the practice; and
- the name, address and date of birth of the patient involved.

If you suspect that the law may have been broken you should immediately notify us, as it may need to be reported to the police.

You must immediately send us all legal documents and other correspondence you receive relating to any circumstances that have resulted, or may result in a claim.

To assist you further, an incident notification form is available on our website mdanational.com.au.

You receive advice that a claim has or will be made against you

Hopefully you will have told us about the matter well before it becomes a claim. However, whether we have been notified or not, send all the details of the claim to us as soon as possible, including all legal documents and correspondence from lawyers.

Any investigation, arising from your provision of healthcare services

Should you become involved in any official proceeding, inquiry or examination, let us know as soon as you can. We have a wealth of experience in handling such matters but in some cases we may need to engage lawyers to represent you.

What to do when something goes wrong

Speak to us first. Patients are always entitled to a full, accurate, sympathetic and prompt account of the facts, but you must not admit liability or do anything that may compromise our ability to defend you or an insured person.

Refrain from entering into any correspondence with the patient without first contacting us.

What to do if you want to make a complaint about us

We are committed to dealing openly with all of our clients and will endeavour to resolve any complaint quickly, efficiently and fairly. We view complaint resolution as an important part of our continuous improvement process.

A complaint is an expression of dissatisfaction made to us, relating to our products and services or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.

Internal dispute resolution

In our experience, most issues can be resolved with a quick phone call or email to one of our staff.

If you are not satisfied with the response to your complaint or do not take up a matter directly with the staff, please contact our Complaints Officer by:

Phone: 1800 034 466 (Freecall)
Fax: (08) 9415 1492
Email: complaintsofficer@mdanational.com.au
In writing: PO Box 445
WEST PERTH WA 6872

We will respond to you with a decision within 15 business days. If you are satisfied with our response, the matter will be considered resolved. If you are not satisfied with our response and wish to pursue the matter further you may refer the matter to the external dispute resolution scheme to which we belong.

External dispute resolution

If you are not satisfied with the outcome of our internal dispute resolution process, you can refer the dispute to the Financial Ombudsman Service Limited (the FOS). The FOS is an independent and impartial national body established to handle enquiries and complaints and to resolve disputes between consumers and their financial services provider. Its service is free to consumers.

The FOS will review a complaint by you or an insured person only if you or the insured person have first gone through our internal complaints and dispute resolution process and the matter to which the complaint relates is within the FOS' Terms of Reference. Please note that the FOS can consider insurance matters only. The FOS is not able to consider matters relating to Membership of MDA National.

For more information about the FOS and the types of matters that it can resolve, visit its website fos.org.au or contact our Complaints Officer. Online dispute forms are available on the FOS website.

You can contact the FOS by:

Phone: 1300 780 808 (local call fee applies)
In writing: GPO Box 3
MELBOURNE VIC 8007

SECTION 3: Policy Wording

Practice Indemnity Policy

This Practice Indemnity Policy is issued by MDA National Insurance Pty Ltd
ABN 56 058 271 417, AFS Licence No. 238073.

When issuing your Policy we have relied on the information you have given us in your proposal. You must tell us without delay if any of this information is incorrect or if it changes. Changes to the practice which may affect your risk or exposure to risk must be reported to us as soon as practicable. If you fail to do so, you may lose your right to indemnity under your Policy.

Please read this Policy wording and the Certificate of Insurance carefully and keep them in a safe place. When reading this Policy wording, please note the use of specially defined words which are listed at the end of the Policy wording.

What we insure you for

Civil liability

1. We will indemnify you and the insured persons for civil liability for a claim arising directly out of your provision of healthcare services, but only when:
 - (a) the claim is first made against you or the insured person during the period of insurance; and
 - (b) you tell us about the claim in writing during the period of insurance; and
 - (c) the claim arises from an act or omission occurring on or after the retroactive date.

Clinical trials cover

2. We will indemnify you and the insured persons for civil liability for a claim arising directly out of the provision of healthcare services by you as part of your involvement in a clinical trial or research project that both:
 - (i) has approval from an ethics committee in accordance with the National Health and Medical Research Council guidelines; and
 - (ii) has been conducted in accordance with any conditions or approval made by the ethics committee;but only when:
 - (a) the claim is first made against you or the insured person during the period of insurance; and
 - (b) you tell us about the claim in writing during the period of insurance; and
 - (c) the claim arises from an act or omission occurring on or after the retroactive date.

Privacy complaints

3. We will indemnify you and the insured persons for civil liability for a claim arising out of an unintentional breach of the *Privacy Act 1988* (Cth) or equivalent State or Territory legislation, but only when:
 - (a) the claim is first made against you or the insured person during the period of insurance; and
 - (b) you tell us about the claim in writing during the period of insurance; and
 - (c) the claim arises in connection with the provision of healthcare services occurring on or after the retroactive date.

Notifiable conduct protection

4. We will indemnify you and the insured persons for civil liability for a claim (including a claim for defamation) arising directly out of you or an insured person, in good faith and in the public interest, reporting an incident or a health professional to a hospital, area health authority or professional body, or participating in the investigation of the incident or health professional, but only when:
 - (a) the claim is first made against you or the insured person during the period of insurance; and
 - (b) you tell us about the claim in writing during the period of insurance; and
 - (c) the claim arises from a report occurring on or after the retroactive date.

Defence costs for claims

5. We will indemnify you and the insured persons for defence costs that we incur on your or an insured person's behalf for any claim covered under clauses 1, 2, 3 and 4 of your Policy.

Defence costs for intellectual property disputes

6. We will indemnify you and the insured persons for defence costs that we incur on your or the insured person's behalf for a claim for infringement of copyright, trademark, patent or registered design, but only when:
 - (a) the claim is first made against you or the insured person during the period of insurance; and
 - (b) you tell us about the claim in writing during the period of insurance; and
 - (c) the claim arises from an infringement occurring on or after the retroactive date; and
 - (d) the claim is related to your provision of healthcare services; and
 - (e) the claim does not arise from a malicious act or omission, or an intentional infringement.

Defence costs for defamation

7. We will indemnify you and the insured persons for defence costs that we incur on your or the insured person's behalf for a claim for defamation, but only when:
 - (a) the claim is first made against you or the insured person during the period of insurance; and
 - (b) you tell us about the claim in writing during the period of insurance; and
 - (c) the claim arises from an act occurring on or after the retroactive date; and
 - (d) the claim is related to your provision of healthcare services; and
 - (e) the claim does not arise from a malicious act or omission or intentional defamation; and
 - (f) you have paid the excess stated in the Certificate of Insurance applicable to this clause.

Defence costs for investigations

8. We will indemnify you and the insured persons for:
 - (i) defence costs that we incur on your or the insured person's behalf; and
 - (ii) legal costs of a professional registration board, professional services review committee, professional body or administrative body that you or the insured person are ordered to pay as a result of a finding against you or the insured person;for an investigation arising directly out of your provision of healthcare services, but only when:
 - (a) you or the insured person is first made aware of the investigation during the period of insurance; and
 - (b) you tell us about the investigation in writing during the period of insurance; and
 - (c) the investigation arises out of an act or omission occurring on or after the retroactive date.

Defence costs for competition, consumer and fair trading claims

9. We will indemnify you and the insured persons for defence costs that we incur on your or an insured person's behalf for a claim that you or the insured person breached a provision of the *Competition and Consumer Act 2010* (Cth), of the *Trade Practices Act 1974* (Cth) or any equivalent State or Territory fair trading legislation, but only when:
 - (a) the claim is first made against you or the insured person during the period of insurance; and
 - (b) you tell us about the claim in writing during the period of insurance; and
 - (c) the claim arises from a breach occurring on or after the retroactive date; and
 - (d) the claim is related to your provision of healthcare services; and
 - (e) the breach does not arise from a malicious act or omission or intentional breach.

Defence costs for employment disputes

10. We will indemnify you for defence costs that we incur on your behalf for defending against a claim that both:
- (i) is made against you by a person formerly, currently or proposed to be employed by you or contracted by you as a staff member, including in either case a health professional; and
 - (ii) relates to or arises out of the contract or proposed contract under which that person was, is or will be engaged to assist you in the provision of healthcare services;

but only when:

- (a) you first become aware of the claim during the period of insurance; and
- (b) you tell us about the claim in writing during the period of insurance; and
- (c) the claim relates to an act, omission or event occurring on or after the retroactive date.

Loss of documents

11. In the event of any loss of documents which were in your possession or the possession of those to whom you entrusted the documents in the ordinary course of your providing healthcare services, we will indemnify for the reasonable costs and expenses incurred by you in replacing or restoring those documents, but only when:
- (a) the loss of documents occurred during the period of insurance; and
 - (b) you notify us about the loss of documents in writing during the period of insurance; and
 - (c) we have agreed to the costs of replacement or restoration before they are incurred.

We will not indemnify you for any costs and expenses incurred in replacing or restoring electronic documents or data as a result of a computer virus or an unauthorised access to your systems where you do not have appropriate back up storage systems and protocols and current security software installed to protect your documents and data from such risks.

Non-imputation and severability

12. In the event that your Policy covers more than one person or entity, any conduct, act or omission by one person or entity which would allow us to refuse indemnity or to reduce our liability under your Policy will not prejudice the right of any other person or entity to indemnity provided that the other person or entity:
- (a) had no prior knowledge of the conduct, act or omission; and
 - (b) provides written notice to us of the conduct, act or omission as soon as the other person or entity first became aware of it.

How much we will pay

13. The total amount of indemnity we will pay:

- (a) for the aggregate of all claims, defence costs and other matters indemnified under your Policy during the period of insurance will not exceed the Maximum Limit of Indemnity set out in the Certificate of Insurance; and

provided that aggregate maximum limit of indemnity is not exceeded:

- (b) for each claim under any of clauses 1 to 4 of your Policy (including defence costs under clause 5) will not exceed the Maximum Limit of Indemnity for any one claim set out in the Certificate of Insurance; and
- (c) for the aggregate of all claims for defence costs or loss of documents under clauses 6, 7, 8, 9, 10 or 11 indemnified under your Policy during the period of insurance will not exceed the applicable Sub Limit of Indemnity set out in the Certificate of Insurance.

If an excess applies, it must be paid in respect of each applicable matter for which indemnity is claimed under your Policy before we will pay any indemnity.

14. Where the same act or omission or one or more related acts or omissions give rise to more than one claim (whether by one or more claimants), all such claims will constitute a single claim under your Policy and will be treated as if first made at the time the earliest claim against you was made.

Where the same act or omission or one or more related acts or omissions give rise to more than one investigation, all such investigations will constitute a single claim under your Policy and will be treated as if first made at the time the earliest investigation arose.

What we exclude from your Policy

15. We will not indemnify you or any insured person under your Policy when:

- 15.01 the claim or investigation arises from any act or omission or circumstance that you have or should have told us about in your proposal or otherwise in accordance with your duty of disclosure;
- 15.02 the claim or investigation arises from an act or omission or circumstances notified to us or to another insurer or Medical Defence Organisation or indemnity provider before the period of insurance;
- 15.03 and to the extent that you or an insured person are entitled to indemnity for the claim or investigation under any other policy issued by us or another insurer (to the extent allowed by law) or you or the insured person have the benefit of any other indemnification arrangement, including one under a government scheme or with a Medical Defence Organisation or other indemnity provider;
- 15.04 the claim or investigation arises from an act or omission occurring prior to any retroactive date specified in the Certificate of Insurance;

- 15.05 the claim or investigation arises from any fact, situation or circumstance which you or an insured person knew before your Policy began, or which a reasonable person in the position of an insured person would have thought, before your Policy began, might result in someone making an allegation against you or an insured person that might be covered under your Policy;
- 15.06 and to the extent that the claim arises from the acts or omissions of a health professional who does not have current and adequate professional indemnity insurance to cover his or her own liabilities arising from that claim;
- 15.07 the claim or investigation is made against an insured person who is a health professional and arises from the provision of healthcare services by the insured person in his or her capacity as a health professional;
- 15.08 the claim or investigation arises in any way out of a practice or procedure not directly connected with the provision of healthcare services;
- 15.09 the claim or investigation arises in any way from a practice or procedure specifically excluded in the Certificate of Insurance;
- 15.10 the claim arises in any way from the provision of obstetric care by someone other than a medical practitioner who specialises in Obstetrics except where a nurse or midwife employed by you provides antenatal or postnatal care under the supervision of such a medical practitioner;
- 15.11 the claim arises in any way from any activity in connection with a clinical trial or research project, including but not limited to:
- (a) claims against you or insured persons in any way relating to sponsorship of, initiating or administering the trial or project;
 - (b) claims arising from adverse outcomes where you did not provide healthcare services;
 - (c) claims relating to the trial or project protocol; or
 - (d) claims relating to your overseeing the trial or project or any act or omission by you or an insured person as a member of an ethics committee;
- except to the extent that you and the insured persons are indemnified under clause 2;
- 15.12 the claim arises in any way out of the provision of healthcare services to a public patient in a public hospital;
- 15.13 the claim or investigation arises in any way from the acts of a person where those acts or omissions were:
- (a) outside the boundaries of his or her training and/or qualifications; or
 - (b) outside the terms and conditions of his or her registration; or
 - (c) outside the terms and conditions or the ordinary course of his or her employment or contract with you;

- 15.14 the claim or investigation arises in any way out of actual or alleged sexual harassment, sexual misconduct or criminal conduct;
- 15.15 the claim arises in any way out of the provision of healthcare services by a person intoxicated or otherwise impaired by the use of an intoxicant or drug, except the reasonable refusal to provide healthcare services because of the influence of such intoxicant or drug;
- 15.16 the claim arises in any way as a result of the transmission of a contagious disease from a former or current employee, contracted staff member, contractor or anyone for whom you are liable, to a patient when at the time of transmission, you or your employee or contractor knew or should have reasonably known that the infected person was carrying the disease;
- 15.17 the claim or investigation arises out of a fault or alleged fault in any equipment or machinery used in the provision of healthcare services where such equipment or machinery was not used, maintained or serviced in accordance with any requirement or recommendation of the manufacturer;
- 15.18 the claim arises in any way out of the development, manufacture, storage or supply of any good or product. This exclusion does not apply to the manufacture or supply of a product by a health professional or by an insured person as an intrinsic part of the provision of healthcare services to your patients;
- 15.19 the claim or investigation arises in any way from any dishonest, fraudulent, illegal, criminal or malicious act or omission of any person who was at the time of the act or omission an insured person or a principal partner or director of yours;
- 15.20 the claim or investigation:
- (a) arises out of any act or omission occurring or allegedly occurring outside the Commonwealth of Australia or its territories or protectorates unless we have agreed in writing to extend cover and then only to the jurisdictions and for the period of time specified by us in writing;
 - (b) arises out of any judgment or order by a court outside the Commonwealth of Australia or its territories or protectorates; or
 - (c) is based on, derived from or an enforcement of any judgement, order or award obtained within or determined pursuant to the laws of any country outside the territorial limits of the Commonwealth of Australia;
- 15.21 you or an insured person have admitted liability for the claim or settled, or agreed to settle, the claim without our consent;

- 15.22 any dispute between you and an insured person or a person who may become an insured person, except:
- (a) a claim or investigation arising out of the provision of healthcare services to that person;
 - (b) a claim for contribution in relation to a claim by a third party arising directly in connection with your provision of healthcare services; or
 - (c) a claim to which clause 10 applies;
- 15.23 a person makes a claim because, and only because, that person is or was your employee or agent (including a partner, director or officer of yours) or because you did not employ that person, except to the extent that you are indemnified under clause 10;
- 15.24 and to the extent that the claim or investigation involves a legal obligation:
- (a) to refund any fee charged to a patient;
 - (b) to pay a fine or a civil or criminal penalty; or
 - (c) to pay punitive, aggravated or exemplary damages;
- 15.25 the claim or investigation arises in any way out of the unlawful sale, supply, use or application of any substance;
- 15.26 the claim or investigation arises in any way out of the ownership, use or occupation or state of any premises or anything done or omitted to be done in respect of the state of any premises;
- 15.27 the claim or investigation arises in any way out of or in connection with an actual or threatened pollution of the environment (including exposure to asbestos) or a requirement for you to deal with that pollution exposure. This exclusion does not apply to the provision of healthcare services to any patient who has symptoms, whether actual or alleged, as a result of any exposure to pollution including asbestos whether directly or indirectly;
- 15.28 the claim or investigation arises out of or is in connection with:
- (a) any contract for the sale or purchase of any asset, property or investment, including a contract for the purchase or sale of all or part of your or another practice providing healthcare services;
 - (b) any dispute arising out of or in connection with an employment contract or contract for services connected with your sale or purchase of a practice;
 - (c) any contractual liability, warranty or guarantee except if you would have been otherwise liable in the absence of the contractual liability, warranty or guarantee;
 - (d) any trading debt or any guarantee for payment of a trading debt;
 - (e) payment or non-payment of any dividend or other form of profit distribution;

- 15.29 the claim or investigation arises out of or is connected with acts of terrorism, war, invasions, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, insurrection, military or usurped power, This exclusion does not apply to any healthcare procedure performed as a result of any injuries arising out of any terrorism, war or warlike situation;
- 15.30 the claim or investigation arises in any way from the loss of property including but not limited to money, computer or other electronic equipment, precious metal, gemstones, negotiable instruments, jewellery, artworks or antiques belonging to you or for which you are responsible;
- 15.31 any claim or investigation arising out of taxes or taxation or debts;
- 15.32 any claim for actual or alleged defamation except to the extent that we indemnify you for defence costs under clause 7.

Fraudulent claims

16. We may reject a claim for indemnity under your Policy by you or an insured person if the claim or any part of the claim is fraudulent or made fraudulently.

Conditions

Payment of premium

17. You must pay the premium on or before the date when it is due.

When you have to notify us

18. You and the insured persons must notify us in writing as soon as practicable after you or the insured persons become aware of:
- (a) any claim or investigation;
 - (b) any circumstance that might lead to a claim or to an investigation involving you or an insured person; and
 - (c) any other circumstance which might give you or an insured person a right to seek indemnity under your Policy.
19. If you or an insured person seek indemnity under your Policy, you or the insured person must tell us about any other insurance or entitlement to indemnity that may indemnify you or the insured person in respect of such claim or investigation, including the identity of the other insurer, the policy number and any other information that we may reasonably require.

Your duty to co-operate

20. You and the insured persons must, at your or their expense:
- (a) give us, our investigators and legal representatives all information, documents and assistance we reasonably require including without limitation access to books and records of your healthcare practice; and
 - (b) co-operate fully with us, our investigators and legal representatives.
21. You and the insured persons agreed to waive any legal professional privilege to the extent only that the privilege would otherwise prevent any legal representative appointed by us disclosing information to us.

Prevention of loss

22. You and your employees must not, without our prior written consent:
- (a) admit liability for a claim or potential claim;
 - (b) do or not do anything which may compromise us, including our ability to defend you or an insured person against a claim or potential claim or defend you in an investigation; or
 - (c) make any payment or settlement, or offer of payment or settlement, of any claim or potential claim;
- in respect of which we may be liable to indemnify you.
23. You and your employees must use all reasonable measures to avoid or reduce any liability covered under your Policy.

Alteration of risk

24. You must give us notice as soon as practicable of any material alteration in the risk during the period of insurance, including without limitation:
- (a) any expansion of your practice providing healthcare services (whether by acquisition of another practice or business or otherwise); or
 - (b) any change in the nature of your practice or the healthcare services provided in your practice; or
 - (c) you becoming insolvent, being declared or an application being made for you to become bankrupt, having or an application being made to have a receiver, liquidator or administrator appointed, making a composition with your creditors or generally taking advantage of any statute for the relief of insolvent debtors or applying to be wound up or dissolved.

Registration and qualifications

25. It is a condition of your Policy that all health professionals, employees and contractors engaged by you are suitably qualified and registered to provide the services required to perform the duties for which they are employed or engaged and that you have taken all necessary steps to ensure that each healthcare professional has current and adequate professional indemnity insurance.

General terms

Allocation of defence costs

26. If the claim or investigation includes both allegations in relation to which you or an insured person are entitled to indemnity under your Policy and allegations in relation to which you or the insured person are not entitled to indemnity under your Policy we will pay only that proportion of defence costs which is attributable to the covered allegations. We will determine in our absolute discretion the allocation of defence costs between the covered allegations and the uncovered allegations and will inform you of our determination in writing. In determining the allocation of defence costs, we will have regard to the proportion which that part of the claim or investigation consisting of covered allegations bears to the whole of the claim or investigation.

Our right to conduct and control proceedings

27. You and the insured persons agree that:

- (a) we have the right to conduct and control all matters that we agree to indemnify under your Policy, including the investigation, defence, avoidance, reduction, settlement and, subject to clause 28, any appeal as we see fit; and
- (b) we may do so in your name or the insured person's name.

However we will not admit liability for or settle any claim or resolve any investigation involving you or an insured person without your or the insured person's prior consent. If you or the insured person refuse to consent to our settling a claim or resolving an investigation, our liability is then limited to the amount we recommend in settlement and/or defence costs up to the date we recommend settlement of the claim or resolution of the investigation to you and the insured person.

Appeals

28. If you are dissatisfied with the decision made by a court, board, tribunal or other decision-making body in a matter in which we have represented you or an insured person under your Policy, and you want to appeal against that decision, you must request our written approval within 7 business days after the decision is handed down. You must do so in writing, setting out your reasons for wanting to appeal. We will inform you in writing within 10 business days after we receive your request whether we consent or not to pay your legal costs of the appeal. Our decision to pay the legal costs of any appeal is final and in our complete discretion. We reserve the right to seek the opinion of appropriate counsel to advise on the merits and prospects of success of any such action prior to providing our decision. If you decide to appeal without our consent, we will not pay any additional legal costs associated with the appeal (whether successful or not) or any further amount which may be an outcome of the appeal.

If your appeal is successful and you are entitled to a payment or refund of defence costs paid by us and/or any money that we paid the claimant, that payment or refund becomes a debt due to us and you must forward that payment or refund to us, less any legal fees and expenses you have incurred in the appeal.

Subrogation

29. You and the insured persons agree not to surrender any right to, or settle any claim for contribution, indemnity or recovery, without our consent.
30. If we make a payment under your Policy, we are subrogated to all of your rights of contribution and indemnity or recovery and those of the insured persons.

Cancellation

31. You may cancel this Policy at any time by notifying us in writing.

If you cancel your Policy within the cooling off period of 21 days after it was issued to you, your premium will be refunded in full with no cancellation fee deducted.

If you cancel your Policy outside the cooling off period, a cancellation fee applies which is equivalent to 45 days' premium.

If you have paid your premium in full, we will deduct this cancellation fee from the refund. If you are paying the premium in instalments, you are still liable to pay the cancellation fee. We will issue any refund directly to your nominated bank account or if instructed by you, donate the amount to a registered charity identified within our Corporate Social Responsibility program.

If the total refund is less than \$5 we will, at our absolute discretion, either pay the refund amount directly to your nominated bank account or donate the refund amount to a registered charity in line with our Corporate Social Responsibility policy.

There will be no refund of premium where you have notified a claim or potential claim under your Policy.

32. We may cancel your Policy by giving you 3 business days' written notice if:
 - (a) you failed to disclose or misrepresented to us any information that you knew (or could reasonably be expected to have known) was relevant to our decision to insure you and on what terms;
 - (b) you fail to comply with your duty of utmost good faith to us;
 - (c) you fail to comply with a provision of your Policy including the provision to pay the premium;
 - (d) you fail to comply with any provision of your Policy which requires you to notify us (including your obligation to notify us of any change in the healthcare services provided by you); or
 - (e) you make a fraudulent claim for indemnity under your Policy.

Governing law

33. Any dispute that arises between you and us under your Policy will be subject to the law and jurisdiction of Western Australia.

Interpretation

34. The headings in this Policy wording are included for descriptive purposes only and do not form part of your Policy for the purpose of construction or interpretation.
35. Under your Policy the masculine includes the feminine and the singular includes the plural and vice versa.

Definitions

36. In your Policy:

Certificate of Insurance means the certificate of insurance to your Policy.

Claim means:

- (a) a demand for, or an assertion of a right to, compensation, damages or injunctive relief made against you or an insured person; or
- (b) an intimation of an intention to seek compensation, damages or injunctive relief from you or an insured person; or
- (c) an allegation of unlawful conduct, misconduct or unsatisfactory conduct against you or an insured person.

Defence costs means legal costs reasonably and necessarily incurred:

- (a) in defending any proceedings;
- (b) in attending or assisting in an investigation;
- (c) in prosecuting any proceedings for indemnity, contribution or recovery; or
- (d) in investigating, avoiding, reducing, settling or otherwise resolving any claim or investigation.

Dental Practitioner means a natural person registered and practising in Australia as a dental practitioner under the Health Practitioner Regulation National Law (including a dentist, dental specialist, dental hygienist, dental prosthetist, dental therapist or oral health therapist).

Documents means any written, printed or reproduced material, or any electronic document or data used in connection with the business of your practice providing healthcare services, but does not include any currency, negotiable instrument, cheque, stamp, bond or coupon or any document evidencing title to or which constitutes a form of security.

Employee means a natural person not being a health professional who:

- (a) is employed by you during the period of insurance; or
- (b) was employed by you prior to the period of insurance; or
- (c) is a student working for you at your premises under a work experience program to provide or assist in providing healthcare services; or
- (d) the executor or administrator of the estate of someone referred to in (a), (b) or (c) above.

Excess means the amount set out in the Certificate of Insurance that must be paid to us before we will indemnify you or an insured person.

Health professional means a medical practitioner or a dental practitioner.

Healthcare services means:

- (a) those medical treatments, services or advice provided to patients in the course of your practice as declared in your proposal, accepted by us and set out in the Certificate of Insurance as Professional Services or in any endorsement; or
- (b) the rendering of emergency medical assistance to a person where your employee is in attendance as a bystander and where there is no expectation of payment or other reward.

Insured person means a natural person who is or was your employee or business partner, but only to the extent that the employee or business partner is or was not engaged in the provision of healthcare services as a health professional.

Investigation means any official proceeding, inquiry or examination in relation to the provision of healthcare services by you or an insured person where you or the insured person are legally or professionally required to respond, participate or attend.

Loss of documents means:

- (a) the loss of, damage to or destruction of physical documents; or
- (b) the deletion, corruption or modification of electronic documents or data.

Medical practitioner means a natural person registered and practising in Australia as a medical practitioner under a law of the Commonwealth or any State or Territory of Australia that provides for the registration or licensing of medical practitioners, including a person provisionally registered and practising as such.

Period of insurance means the period of insurance set out in the Certificate of Insurance.

Policy means the Certificate of Insurance, this Policy wording any Endorsement applying to this Policy wording current during the period of insurance and any endorsements issued to you during the period of insurance.

Proposal means all documents comprising your application for or renewal of your Policy including any pre-renewal questionnaire.

Retroactive date means any date specified in the Certificate of Insurance as the retroactive date.

We, our and **us** mean MDA National Insurance Pty Ltd ABN 56 058 271 417 and AFS Licence No. 238073, being the insurer named in the Certificate of Insurance.

You and **your** mean the entity conducting the practice providing healthcare services named in the Certificate of Insurance as the insured.



Freecall: 1800 011 255

Member Services Fax: 1300 011 244

Claims Fax: 1300 011 235

Email: peaceofmind@mdanational.com.au

Web: mdanational.com.au

Adelaide

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Phone: (08) 7129 4500 Fax: (08) 7129 4520

Brisbane

Level 8, 87 Wickham Terrace SPRING HILL QLD 4000
Phone: (07) 3120 1800 Fax: (07) 3839 7822

Hobart

Level 1, ABC Centre
1-7 Liverpool Street HOBART TAS 7001
Phone: (03) 6231 6235 Fax: (03) 6234 2344

Melbourne

Level 3, 100 Dorcas Street SOUTHBANK VIC 3006
Phone: (03) 9915 1700 Fax: (03) 9690 6272

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Level 3, 88 Colin Street WEST PERTH WA 6005
Phone: (08) 6461 3400 Fax: (08) 9415 1492

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Level 5, AMA House
69 Christie Street ST LEONARDS NSW 2065
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